IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8484 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAMOR GOVINDBHAI BADIYABHAI

Versus

INDIAN OIL CORPORATION LTD

Appearance:

1. Special Civil Application No. 8484 of 1995

MR YN OZA for Petitioner No. 1

MR ANSHIN H DESAI for Petitioner No. 1

MR VD PARGHI for Respondent No. 1

MR GN SHAH for Respondent No. 1

MR KV SHELAT for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3-4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/02/2003

ORAL JUDGEMENT

1. This petition has been filed for quashing and setting aside the order passed by the respondent no. 1 allotting to the respondent no. 2 the retail outlet dealership at village Khargela, Taluka Dahod, District Panchamahals by the order dated 19-9-1995 and also for a direction to the respondent authority to give allotment of retail outlet dealership to the petitioner.

2. The petitioner is a member of scheduled tribe and residing at village Kathla, Taluka Dahod, District Panchamahals which is about 2 k.m. away from the place where the retail outlet was to be set up pursuant to the advertisement issued by the respondent no. 1 in "Sandesh" newspaper dated 12-4-1994 requiring the application from eligible candidates and eligibility criteria has been made in the notice/advertisement. In the said advertisement it is specifically stated that the concerned candidate must be resident of one of the districts mentioned in the advertisement for last five years and his/her income should not exceed 50,000/- p.a.. for the years 1992-93. Pursuant to the said advertisement, the interviews were held on 1-5-1995 and as per the information received by the petitioner, the petitioner was placed at Sr. 1 in the select list. But that allotment was cancelled by the respondent no. 1 and the respondent no. 2 was given the same retail outlet dealership.

3. The first contention of the learned counsel for the petitioner is that the respondent no. 2 is not eligible for getting retail outlet dealership on account of the fact that he is not resident of one of the districts mentioned in the advertisement/notice for last five years. It is also contended that the respondent no. 2 is also not eligible because his income exceeds Rs.50,000/p.a.. for the year 1992-93 as required under the said notice/advertisement. This point was raised earlier before the Court and the Court found that the respondent no. 2 was resident of one of the districts mentioned in the advertisement. Therefore, the learned counsel for the petitioner does not press this point seriously. So far as the income criteria is concerned, this court vide order dated 19/20-7-2001, directed the respondent no. 1 to hold a fresh inquiry on the question whether the respondent no. 2 was satisfying the income eligibility criterion for the period between 1-4-1992 and 31-8-1995, in the light of the observations made in the order. For that purpose the inquiry was held and the respondent no.1 submitted the report on 29-10-2001,

wherein the finding is that there is nothing on record to show that the income of the father of the respondent no. 2 during the period from April 1992 to August 1995 exceeds Rs.50000/- p.a. nor any oral submission was made by Dr. Mitesh K. Garasia in that respect. Considering the earlier income of his father, his proportionate income for the period April, 95 to August. 95 is taken as Rs.3,000/-. As such his father's income never exceeded the limit of Rs.50000/- - p.a.. during the aforesaid period. In view of the above, the respondent no. 2 is eligible candidate for the purpose of resident of one of the five districts and for income criteria as mentioned in the advertisement/notice.

4. The second contention of the learned counsel for the petitioner is that in the Oil Selection Board, when the decision for allotment of retail outlet dealership to the respondent no. 2 was taken, the retired High Court as a Chairman, was not present. The Oil Selection Board consists of a retired High Court Judge as a Chairman and representative of SC/ST and other weaker sections and permanent public figure. In this connection, learned counsel for the respondent no. 1 makes a statement on the basis of the material with her that the retired High Court Judge as a Chairman of the Oil Selection Board was present and the decision was taken by him at the relevant time. This contention is also not sustainable in the eye of law. As such, the contention of the learned counsel for the petitioner is not tenable. In this regard, learned counsel for the respondent no.1 stated that she is having entire original record of the case and on the basis of the said record she stated that the allegation is totally false that the petitioner was selected at Sr. no.1. A letter of intent has been issued to the respondent no. 2 on 19-9-1995.

5. The third contention of the learned counsel for the petitioner is that the respondent no.2 is son-in-law of a Sitting Member of Parliament and father-in-law of the respondent no. 2 i.e. Member of Parliament influenced the other members of the Oil Selection Board as at the relevant point of time when the decision for allotment of retail outlet dealership was taken, the retired High Court Judge being a Chairman of the Oil Selection Board was not present. In this connection, it is pertinent to note that the father-in-law of the respondent no. 2 no doubt was a member of parliament. But he had not influenced any member of the Oil Selection Board and hence no question arises that the influence

being made by the sitting Member of Parliament as a retired High Court Judge was present when the decision for allotment of retail outlet dealership to the respondent no. 2 was taken and the said decision was signed by the Chairman. As such, this contention is also not tenable at all.

6. Fourth contention of the learned counsel for the petitioner is that pursuant to the advertisement dated 12-2-1994 the interview was held on 1-9-1995 and the result was declared on 15-9-1995 after 15 days. The letter of intent was issued on 19-9-1995. But from the record, it appears that the letter of intent was also issued on 15-9-1995. Therefore, the contention of the learned counsel for the petitioner that the result was declared was after 15 days and hence the decision for allotment of the retail outlet dealership to the respondent no.2 was influenced by the father-in-law of the respondent no. 2, is not sustainable in the eye of law in view of the fact that decision of the Oil Selection Board for allotment of the aforesaid dealership was not influenced by the extraneous consideration. In this connection the learned counsel for the respondent no. 1 makes a statement that the decision was taken on 1-9-1995 and the same was communicated to the respondent no. 1 on 6-9-1995.

7. Last contention of the learned counsel for the petitioner is regarding malafide intention on the part of the respondent no. 1. It is stated in the affidavit dated 19-10-2000 that the respondent no. 2 is son-in-law of Shri Somajibhai Damore and Somajibhai Damore had seen it that all his relatives, kiths and kids got the allotment of such dealership and following dealership have been granted to the persons and relatives of Shri Somajibhai Damore :

(i) Damore Gas Services - allotted to Popatlal Damore, who is the brother of Shri Somajibhai Thakore, M.P. (Indian Oil Corporation, at Dahod).

(ii) Damorani Petroleum - allotted to Vanraj S. Damore, son of Shri Somajibhai Damore, M.P. (Hindustan Petroleum, at Piplod).

(iii) Vanraj Gas Services - allotted to Ratanbhai Machhar, son in law of Shri Somajibhai Damore, M.P. (Bharat Petroleum, at Dahod).

(iv) Kilraj Petroleum - allotted to Dalpatsinh Vasava,

who is the son in law of Shri Somajibhai Damore M.P. (Indian Oil Corporation, at Dabhan Chokadi, Nadiad Road).

(v) Damorani Petrol Pump - allotted to Dalpatsinh Vasava, who is the son in law of Shri Somajibhai Thakore (Indian Oil Corporation, Netraj Rajpipla).

8. In this respect the affidavit has been filed by Somjibhai P. Damor - respondent no. 4 on 23-11-2000, wherein it is stated that "the rules provide regarding the prohibitory degree of relations brother or my son, Vanraj got a gas service before 17 years at my instance is not true. In fact, none of them fall within the prohibitory degree of relations nor I had ever recommended for them nor at any point of time I had been a Member of the OSB nor have influenced the decision of the OSB as alleged or at all. On earlier occasion, retail outlet dealership was granted to his son and that was challenged by way of filing Special Civil Application by unsuccessful candidate and in that petition this Court directed to inquire into the allegations made by the petitioner and in that petition on inquiry it was found the averments made by the petitioner of that petition were false and one Vanraj got retail outlet dealership on merits. The decision delivered in that petition was carried before the Division Bench of this Court by way of filing Letters Patent Appeal and that appeal was dismised. It is asserted that some petrol pump was allotted to Dalpatsinh Vasava son-in-law of Somajibhai Damore. That allegation was totally false and no such petrol pump was never allotted to Dalpatsinh Vasava son-in-law of Somajibhai Damore.

9. Learned counsel for the petitioner also pointed out from the letter dated 12-9-1996 that some application was made by Somajibhai Thakore for shifting retail outlet from Kandla to another place and that application was rejected by the Indian Oil Corporation Ltd. on 12-9-1996. As such, it appears from the said letter that neither Indian Oil Corporation Ltd. nor Oil Selection Board could be influenced by the said Somajibhai Damore.

10. Learned counsel for the petitioner relied on the decision of this Court rendered in Special Civil Application No. 10730 of 1996 on 21-6-2001 and in that petition this court suggested to allot LPG distributorship to the heirs or dependents handicapped soldiers or soldiers who have scarified themselves during the war of Kargil or any other war who died protecting

the Boarder's security. The facts of that petition and the facts of the present petition are quite different and hence the decision of that petition is not applicable in the present petition.

11. Learned counsel of the petitioner has further relied on the observations made by the Supreme Court in Transfer Case No. 80 of 2002 and the Supreme Court directed to pass appropriate orders for independent allotment. In that matter, the allotments of dealerships after 1-1-2002 were cancelled by the Executive of the Government of India. This case also does not fall within the criteria fixed by the Supreme Court.

12. Lastly, learned counsel for the petitioner relied on the decision of Supreme Court in the case of Common Cause, A. Registered Society V. Union of India and others, reported in 1996 (6) Supreme Court Cases 530, wherein there was a matter regarding criminal breach of trust and prosecution for the offence punishable u/s 405 and 406 of the I.P. Code. There is no such case in the present petition. Hence, the said decision of the Supreme Court in the case of Common Cause, A Registered Society is not applicable to the present case.

13. I have carefully considered the contentions of the learned counsel for the petitioner and perused relevant material on the record of this case. I do not find any good reason calling for interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India in the decision of the Oil Selection Board for allotment of retail outlet dealership to the respondent no. 2. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim order if any stands vacated.

(Kundan Singh, J.)

/JVSatwara/